

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Alexandre MARTI et al.
Serial No. : 09/673,871
Filed : April 22, 1999
Title : SOLUTION FOR DIAGNOSING OR TREATING TISSUE
PATHOLOGIES
Technology Center: 1600
Examiner : S. J. Sharareh

Mail Stop: Petitions
Director of the U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER §1.181

Sir:

Applicants hereby petition to have the Amendment Under 37 C.F.R. §1.111 filed by Express Mail No. EV 321 889 761US on January 26, 2004, together with a Declaration Under 37 C.F.R. §1.132, including Exhibits A-I and a Power of Attorney by Assignee of Entire Interest (Revocation of Prior Powers and Appointment of New Power) be considered as timely filed for the above-referenced patent application in view of the following facts.

A non-final Office Action was mailed on July 25, 2003 to Applicants' prior attorney, Davis & Bujold, P.L.L.C. The application was transferred to Applicants' current attorney in early October 2003.

In response to the July 25, 2003 Office Action, Applicants' attorney mailed by Express Mail No. EV 321 889 761US on January 26, 2004 to: "Mail Stop., Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" the following documents:

- (1) an Amendment Under 37 C.F.R. §1.111;
- (2) a Declaration Under 37 C.F.R. §1.132, including Exhibits A-I;
- (3) a Transmittal Letter and Request for Extension of Time Pursuant to 37 C.F.R. § 1.136(a), which petitioned for a three-month extension of time from October 25, 2003 to Sunday, January 25, 2004;
- (4) a Transmittal Letter for the Power of Attorney by Assignee of Entire Interest (Revocation of Prior Powers and Appointment of New Power);
- (5) a Power of Attorney by Assignee of Entire Interest (Revocation of Prior Powers and Appointment of New Power); and
- (6) original return receipt post card.

Since the period for a response fell on a Sunday, the response was timely filed under 37 C.F.R. §1.7 on Monday, January 26, 2004. The Transmittal Letter authorized the Patent Office to charge the amount of \$475.00 to deposit account 11-0600, as well as any additional fees as appropriate and/or necessary.

A copy of the entire submission is attached hereto as **Exhibit 1**. A copy of the Express Mail label dated stamped Jan. 26, 2004 is attached hereto as **Exhibit 2**. A copy of the return post card date stamped Jan. 26, 2004 is attached as **Exhibit 3**.

In a March 18, 2004 conversation with the Examiner assigned to the subject application, the Examiner indicated that the above-described response was not received. During the conversation, when Applicants' attorney verified the application serial no. listed on the filed documents as "09/673,817", it became apparent that there was a typographical error in the Serial No., which is 09/673,871, i.e. the last two digits had been inadvertently reversed. In light of the erroneous Serial No., the Examiner indicated that the filed response would likely have been sent to the application bearing Serial No. "09/673,817", which according to the Examiner, is an abandoned application.

Pursuant to the Examiner's suggestion, Applicants' attorney contacted Mr. William Dixon, a Specialist in Technical Center 1600, as to how to expeditiously match the filed response with the file and have it considered timely filed. Mr. Dixon advised Applicants'

attorney to file a Petition under §1.181 together with a copy of the originally filed submission and a statement pointing out the error that was made in the submitted documents.

In view of the above discussion of the inadvertent typographical error in the application Serial No. on all of the documents submitted with Applicants' January 26, 2004 response, Applicants respectfully request that the documents filed on January 26, 2004 be considered timely filed and that the application be passed to the Examiner for action.

In the aforementioned telephone conversation, the Examiner stated that he would not issue a Notice of Abandonment, but would await receipt of a copy of the filed documents.

The Director and Commissioner are hereby authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 \$130.00 for the Petition fee and any other fees which may be required in connection with this Petition under §1.181. The Commissioner is also authorized to charge any additional fees or credit any overpayment to Deposit Account No. 11-0600. A duplicate copy of this communication is enclosed for charging purposes.

In view of the foregoing, Applicants earnestly solicit an expeditious Decision on the Petition so that it may proceed to examination of the claims now pending in the subject application.

Conditional Petition for Revival of an Unintentional Abandonment under 37 C.F.R. §1.137(b).

Applicants hereby make a Conditional Petition for Revival of an Unintentional Abandonment under 37 C.F.R. §1.137(b).

A petition under 37 C.F.R. §1.137(b) must be accompanied by:

- (1) the required reply, unless it has been previously submitted;
- (2) the petition fee set forth in 37 C.F.R. §1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and

(4) any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to 37 C.F.R. §1.137 (c) for a utility application filed before June 8, 1995.

A second copy of above-listed documents filed on January 26, 2004 is submitted as the reply required (Exhibit 4), with a hand written correction of the correct application Serial No. 09/673,871. Applicants respectfully request that Exhibits A-I from Exhibit 1 be considered as part of the required reply in order to avoid duplicate copies in the Patent Office file. The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 the petition fee set forth in §1.17(m) and any other fees which may be required. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. §1.137(b) was unintentional. The relevant facts have been discussed above. No terminal disclaimer is required since the subject application was filed after June 8, 1995.

If a telephone interview would be of assistance in resolving any issue in connection with this Petition, Applicants' undersigned attorney invites the Director or his authorized representative to telephone at the number provided below.

Respectfully submitted,

Date: March 19, 2004

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